

Stanley G. Emert, Jr.
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 31, 1992

The Honorable Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: MM Docket No. 92-61
BROCKPORT, NEW YORK

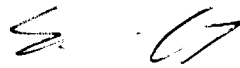
Dear Ms. Searcy:

I enclose the original and proper copies of the "Motion for Protective Order", "Motion to Accept Late Filed notice of Appearance", and "Opposition to 'Motion to Dismiss'" for filing in the above-captioned matter on behalf of Zenitram Communications, Inc.

Please send a stamped copy of the same to me in the self addressed stamped envelope.

Thank you for your kind assistance.

Sincerely,



Stanley G. Emert, Jr.

SGE:
Enclosure

cc: Per Certificate of Service

No. of Copies rec'd 0+6
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Before the
Federal Communications Commission
Washington, D.C. 20554

JUN - 1 1992

~~CORRESPONDENCE~~
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re:
Applications of) MM Docket No. 92-61
LRB BROADCASTING, INC.) File no. BPH-901218MI
DAVID WOLFE) File No. BPH-901219MI
ZENITRAM COMMUNICATIONS, INC.) File No. BPH-901220MG

For Construction Permit
for a new FM Station in
Brockport, New York

To: The Honorable Richard Sippel
Administrative Law Judge

**OPPOSITION TO
"JOINT MOTION TO DISMISS APPLICATION"**

Zenitram Communications, Inc. ("Zenitram") , by and through counsel, for its opposition to the joint motion to dismiss filed by , hereby shows:

1. The moving applicants seek to have Zenitram's application dismissed on the basis that a "Notice of Appearance" was not filed by May 4, 1992, by Zenitram. As the applicant has shown in its "Report" previously filed, Zenitram submitted its post hearing Notice within ample time to the courier for delivery, with instructions for delivery by 5:30 p.m. Not only did the courier not timely deliver the notice, but then it held the notice notifying Zenitram's counsel by mail nearly two (2) weeks later! Additionally, and inexplicably, the notice was held by the courier at the airport until further instructions were received.


2. On July 15, 1991, Zenitram paid its hearing fee and filed a Notice of Appearance. A copy of that pleading is attached as Exhibit 1 hereto. Zenitram served

its post hearing notice upon other counsel, and has filed other matters in this cause. The moving applicants indicated in their motion that Zenitram did not file a motion for acceptance of the late filed notice. That is correct because Zenitram did not know it was late filed. Such a motion has been simultaneously filed, however.

3. It is without question that the policy of the Commission is for there to be competition for selection of broadcast permittees. This is in the best interest of the public to assure that the most qualified applicant is chosen to serve the citizens. To adopt the moving applicants' position would be to effectively reduce the citizens' opportunities from three (3) applicants to two (2), and not necessarily serve the public interest. The rule (1.221) is not so inflexible that would mandate dismissal of Zenitram's application in this situation. It is significant that there has been no change in the relevant language of that rule since the Commission's fee program was initiated. The key point is that Zenitram paid its hearing fee in the amount of \$6,760.00 in the appropriate time.

4. The motion should be denied. Zenitram timely paid its fee, and has shown its evidence of participation in the matter. Based on the foregoing, Zenitram requests the motion to dismiss be DENIED.

Zenitram Communications, Inc.

By: 
Stanley G. Emert, Jr.
Its Attorney

Law Office of Stanley G. Emert, Jr.
2318 2d Avenue, Ste. 845
Seattle, Washington 98121
(206) 525-5459

May 31, 1992

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Opposition to 'Joint Motion to Dismiss'" has been sent by prepaid United States mail, first class, by placing the same in United State mailbox on the 31st day of May, 1992, to the following:

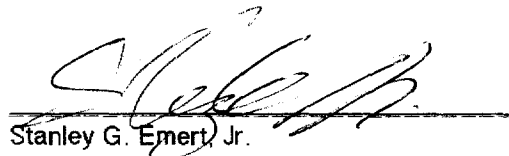
The Honorable Richard Sippel
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